PATENT **MS163228.01 / MSFTP234US**

CERTIFICATE OF FACSIMILE TRANSMISSION

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Date: 3-16-06 Christine R. Sustar

Christine R. Sustar

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:			
Applicant(s):	Curtis G. Wong *et al.*	Examiner:	Viet Duy Vu
Serial No:	09/894,327	Art Unit:	2154
Filing Date:	June 28, 2001		

Title: TRANSPORTABLE IDENTIFIER AND SYSTEM AND METHOD TO FACILITATE ACCESS TO BROADCAST DATA

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPEAL BRIEF

Dear Sir:

Appellants' representative submits this brief in connection with an appeal of the above-identified patent application. A credit card payment form is filed concurrently herewith in connection with all fees due regarding this appeal brief. In the event any additional fees may be due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [MSFTP234US].

I. Real Party in Interest (37 C.F.R. §41.37(c)(1)(i))

The real party in interest in the present appeal is Microsoft Corporation, the assignee of the present application.

II. Related Appeals and Interferences (37 C.F.R. §41.37(c)(1)(ii))

Appellants, appellants' legal representative, and/or the assignee of the present application are not aware of any appeals or interferences which may be related to, will directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims (37 C.F.R. §41.37(c)(1)(iii))

Claims 1-27 stand rejected by the Examiner. The rejection of claims 1-27 is being appealed.

IV. Status of Amendments (37 C.F.R. §41.37(c)(1)(iv))

No claim amendments have been entered after the Final Office Action.

V. Summary of Claimed Subject Matter (37 C.F.R. §41.37(c)(1)(v))

A. Independent Claim 1

Independent claim 1 recites a system to facilitate capture of desired broadcast data, comprising: a transportable object that represents a future temporal broadcast of target data to facilitate data communications between users of the transportable object; and metadata encapsulated within the transportable object that describes a location of the broadcast of the target data so as to enable at least one of monitoring and recording of the target data during broadcast. (*See e.g.*, pg. 2, line 9 – pg. 3, line 14, pg. 5, line 1 – pg. 18, line 2; *See generally* Figs. 1-5).

B. Independent Claim 11

Independent claim 11 recites a system to facilitate access to a presentation of data, comprising; N number of sources that collect data, N being an integer ≥ 1; an

identification system that stamps portions of the collected data with identifying data based on at least one of time, an event or condition, and an entity to provide stamped data; an aggregator that aggregates portions of the stamped data and provides aggregated data; and a transportable identifier that identifies a location associated with a temporal presentation of at least a selected portion of the aggregated data, the transportable identifier facilitates data communications among multiple users of the transportable identifier. (*See e.g.*, pg. 2, line 9 – pg. 3, line 14, pg. 5, line 1 – pg. 18, line 2; *See generally* Figs. 1-5).

C. Independent Claim 19

Independent claim 19 recites a system to facilitate access to a temporal presentation of data, comprising: N number of sources that collect data, N being an integer ≥ 1; an identification system that stamps portions of the collected data with identifying data to provide stamped data, the identifying data identifies portions of the collected data associated with an entity; a multiplexer that separates stamped data associated with the entity from other of the collected data based on the identifying data; an aggregator that aggregates the collected data to provide aggregated data; and a transportable identifier that identifies a location associated with a temporal presentation of at least a selected portion of the aggregated data that includes data associated with the entity, the transportable identifier facilitates communication of information between users of the transportable identifier. (*See e.g.*, pg. 2, line 9 – pg. 3, line 14, pg. 5, line 1 – pg. 18, line 2; *See generally* Figs. 1-5).

D. Independent Claim 20

Independent claim 20 recites a system to facilitate access to data, comprising: means for representing a temporal broadcast of target data, the means for representing being transportable; means for encapsulating information within the means for representing, the encapsulated information enabling the temporal broadcast of the target data to be located, such that at least one of monitoring and recording of the target data during the temporal broadcast thereof is enabled; and means for enabling recipients of the

encapsulating information to communicate data amongst themselves. (*See e.g.*, pg. 2, line 9 – pg. 3, line 14, pg. 5, line 1 – pg. 18, line 2; *See generally* Figs. 1-5).

The aforementioned means for limitations are identified as claim elements subject to the provisions of 35 U.S.C. §112 ¶6. The corresponding structures are identified with reference to the specification and drawings in the parenthetical above corresponding to those claim limitations.

E. Independent Claim 22

Independent claim 22 recites an encoded data signal for transmission between at least two systems, comprising: a transportable object that represents a temporal presentation of target data for broadcast over at least one medium to facilitate data communications between users of the transportable object; at least one data field encapsulated within the object; and the at least one data field identifying the target data with sufficient particularity to locate the target data in the temporal presentation. (*See e.g.*, pg. 2, line 9 – pg. 3, line 14, pg. 5, line 1 – pg. 18, line 2; *See generally* Figs. 1-5).

F. Independent Claim 23

Independent claim 23 recites a system to facilitate capture of desired broadcast data, comprising: a transportable object that represents a future temporal broadcast of target data and facilitates communication of data between recipients of the transportable object; the broadcast of the target data occurring substantially independently from use of the object; metadata encapsulated within the transportable object, the metadata includes information that describes the location of the broadcast of the target data so as to facilitate at least one of monitoring and recording of the target data during broadcast; and a pattern recognition component that evaluates a pattern relating to characteristics of an entity associated with the target data and identifies the entity. (*See e.g.*, pg. 2, line 9 – pg. 3, line 14, pg. 5, line 1 – pg. 18, line 2; *See generally* Figs. 1-5).

G. Independent Claim 24

Independent claim 24 recites a method to facilitate at least one of monitoring and recording a temporal presentation of target data, comprising: providing a transportable

identifier that represents the target data, the identifier including metadata that identifies a future temporal presentation of the target data; locating the temporal presentation of the target data based on the metadata so that the target data can be at least one of monitored and recorded during the temporal presentation; and detecting a pattern that is based on characteristics of an entity associated with the target data to discern an identity of the entity. (*See e.g.*, pg. 22, line 23 – pg. 25, line 14; *See generally* Fig. 7).

VI. Grounds of Rejection to be Reviewed (37 C.F.R. §41.37(c)(1)(vi))

A. Claims 1-27 stand rejected under 35 U.S.C. §103(a) as being anticipated by Connelly (US 2002/0194585 A1).

VII. Argument (37 C.F.R. §41.37(c)(1)(vii))

A. Rejection of Claims 1-27 Under 35 U.S.C. §103(a)

Claims 1-27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Connelly (US 2002/0194585 A1). It is requested that this rejection be reversed for at least the following reason. Connelly does not teach or suggest all the limitations of the subject claims.

> To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) ***must teach or suggest all the claim limitations.*** *See* MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).

Appellants' claimed invention relates to a transportable identifier that facilitates access to broadcast data. (*See* pg. 1, ll. 6-7). In particular, independent claims 1, 11, 19-20, and 22-23 recite a similar limitation: ***a transportable object that represents a future temporal broadcast of target data to facilitate data communications between users of the transportable object***. Contrary to the Examiner's assertions, Connelly does not teach or suggest this aspect of the invention as claimed.

Rather, Connelly relates to providing client feedback to a broadcast source to provide content on demand in broadcast systems. (*See* Abstract). Connelly illustrates the broadcast of a meta-data broadcast schedule to client systems over an appropriate broadcast link. A broadcast server sends an uplink signal to a satellite, which broadcasts the meta-data broadcast schedule to client systems through RF bands, cable systems, or computer networks. (*See* paragraphs 0044-0045). Specifically, the cited reference further discloses a cable system that may enable bi-directional communication between the client system and the broadcast server. (*See* paragraph 0045). However, Connelly fails to teach or suggest the ***facilitation of data communications between users*** (*i.e.*, between more than one client system rather than a client system and the main server), as in the claimed invention.

The Examiner erroneously responds that Connelly provides such teaching at paragraphs 0050-0054 since "both server and client are seen as 'users' of the transportable object." (*See* Advisory Action dated December 29, 2005, pg. 2). Appellants' representative avers to the contrary.

At the indicated paragraphs, Connelly discusses a process in which a client either receives a meta-data broadcast schedule from the server or taps into a continuously steamed meta-data broadcast schedule. The client may use various methods to produce client feedback, such as rating or ranking information, to the broadcast operations center. (*See* paragraphs 0050-0054). While Connelly appears to have described a communication *via* feedback from the client to the server, the cited reference does not facilitate data communications between ***users of the transportable object,*** as claimed. While the Examiner contends that both the server and the client are considered users of the transportable object, the client is the only party that uses the object—to anticipate, prepare for, and view the desired content. (*See* paragraph 0050).

In addition, independent claim 23 (and similarly, independent claim 24) recites: ***a pattern recognition component that evaluates a pattern relating to characteristics of an entity associated with the target data and identifies the entity.*** Entities include a person or article with conditions (*e.g.*, image, sound, position, movement, temperature, health, *etc.*) that may be monitored or recorded by a collection device. (*See* pg. 14, line 17—pg. 15, line 2). The claimed invention employs various data collection elements including, for example, a camera to capture time-based images of the region surrounding the target data for pattern recognition processing. (*See* pg. 15, line 25—pg. 16, line 5). Evaluation of the characteristics derived from the images determines the entity's identity. Although Connelly discusses ranking or rating algorithms based on client feedback, the cited reference is silent with respect to ***entity identification and evaluation***.

In response, the Examiner erroneously contends that Connelly teaches such aspect at paragraphs 0071-0079. (*See* Advisory Action dated December 29, 2005, pg. 2). Appellants' representative respectfully disagrees.

The noted paragraphs involve an aspect of the meta-data table called the relevance value that can be used to predict a user's behavior, including whether or not he will be interested in watching a certain movie. The cited reference further explains that data files may be stored according to a user's rating of that file. (*See* paragraphs 0071-0079). Although the Examiner states that these rating indicators would obviously have included some sort of pattern recognition component to identify the entity (*See* Advisory Action dated December 29, 2005, pg. 2), Connelly neither implicitly nor explicitly refers to such subject. The cited reference fails to teach or suggest the evaluation of a pattern relating to characteristics of an entity associated with the target data, let alone identification of the entity.

In view of at least the foregoing, it is readily apparent that Connelly does not teach or suggest the invention as recited in independent claims 1, 11, 19-20, and 22-24 (and associated dependent claims 2-10, 12-18, 21, and 25-27). Accordingly, this rejection should be reversed.

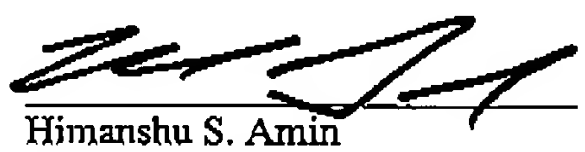
B. Conclusion

For at least the above reasons, the claims currently under consideration are believed to be patentable over the cited references. Accordingly, it is respectfully requested that the rejections of claims 1-27 be reversed.

If any additional fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP234US].

Respectfully submitted,

AMIN & TUROCY, LLP



Himanshu S. Amin
Reg. No. 40,894

AMIN & TUROCY, LLP
24th Floor, National City Center
1900 East 9th Street
Cleveland, Ohio 44114
Telephone: (216) 696-8730
Facsimile: (216) 696-8731

VIII. Claims Appendix (37 C.F.R. §41.37(c)(1)(viii))

1. A system to facilitate capture of desired broadcast data, comprising:

a transportable object that represents a future temporal broadcast of target data to facilitate data communications between users of the transportable object; and

metadata encapsulated within the transportable object that describes a location of the broadcast of the target data so as to enable at least one of monitoring and recording of the target data during broadcast.

2. The system of claim 1, the broadcast of the target data corresponding to a substantially real-time broadcast of data associated with an event or condition.

3. The system of claim 2, the data associated with an event or condition characterizing a previous occurrence of the event or condition.

4. The system of claim 2, the data associated with an event or condition characterizing a substantially live occurrence of the event or condition.

5. The system of claim 2, further comprising:

at least one data collection device that collects data indicative of the event or condition and provides a data signal indicative thereof; and

a broadcaster that broadcasts a data stream that includes the target data, the target data being derived at least in part based on the data signal.

6. The system of claim 2, further comprising

a plurality of data collection devices that collect data indicative of the event or condition;

the collection devices providing data signals indicative of the collected data;

an aggregator that selectively aggregates data based on the data signals provided by the collection devices to provide aggregated data; and

at least a portion of the aggregated data defining the target data represented by the object.

7. The system of claim 6, further comprising a recognition system operative to discern an identity of an entity and stamp part of the collected data with identifying data indicative of the identity of the entity so as to provide entity-specific data.

8. The system of claim 7, further comprising a multiplexer which separates collected data that is associated with the identity of the entity from other collected data to provide identity-specific data based on the identifying data, the aggregator aggregating the collected data so that the at least a portion of the aggregated data includes the entity-specific data.

9. The system of claim 1, the broadcast of the target data occurring substantially independently from use of the object to locate the target data.

10. The system of claim 1, the target data representing at least one of audio data, video data, and sensor data.

11. A system to facilitate access to a presentation of data, comprising;

N number of sources that collect data, N being an integer ≥ 1;

an identification system that stamps portions of the collected data with identifying data based on at least one of time, an event or condition, and an entity to provide stamped data;

an aggregator that aggregates portions of the stamped data and provides aggregated data; and

a transportable identifier that identifies a location associated with a temporal presentation of at least a selected portion of the aggregated data, the transportable identifier facilitates data communications among multiple users of the transportable identifier.

12. The system of claim 11, the collected data further comprising at least one of audio and video media.

13. The system of claim 12, further comprising:

a recognition system operative to recognize an identity of an entity being captured as the media by the N sources;

a multiplexer operative to separate captured media associated with the entity from other captured media collected by the N sources; and

the aggregator being operative to aggregate the collected data so that the selected portion of the aggregated data includes the captured media associated with the entity.

14. The system of claim 11, the temporal presentation corresponding to a substantially real-time broadcast of data associated with an event or condition.

15. The system of claim 14, the temporal presentation being derived from stored data associated with a previous occurrence of the event or condition.

16. The system of claim 14, the temporal presentation corresponding to a substantially live occurrence of the event or condition.

17. The system of claim 11, the temporal presentation occurring substantially independently from use of the transportable identifier.

18. The system of claim 11, the transportable identifier data representing at least one of audio data, video data, and sensor data embodied in the temporal presentation.

19. A system to facilitate access to a temporal presentation of data, comprising:

N number of sources that collect data, N being an integer ≥ 1;

an identification system that stamps portions of the collected data with identifying data to provide stamped data, the identifying data identifies portions of the collected data associated with an entity;

a multiplexer that separates stamped data associated with the entity from other of the collected data based on the identifying data;

an aggregator that aggregates the collected data to provide aggregated data; and

a transportable identifier that identifies a location associated with a temporal presentation of at least a selected portion of the aggregated data that includes data associated with the entity, the transportable identifier facilitates communication of information between users of the transportable identifier.

20. A system to facilitate access to data, comprising:

means for representing a temporal broadcast of target data, the means for representing being transportable;

means for encapsulating information within the means for representing, the encapsulated information enabling the temporal broadcast of the target data to be located, such that at least one of monitoring and recording of the target data during the temporal broadcast thereof is enabled; and

means for enabling recipients of the encapsulating information to communicate data amongst themselves.

21. The system of claim 20, further comprising means for transporting the means for representing to an intended user, such that the user can employ the means for representing to at least one of monitor and record the target data during the temporal broadcast thereof.

22. An encoded data signal for transmission between at least two systems, comprising:

a transportable object that represents a temporal presentation of target data for broadcast over at least one medium to facilitate data communications between users of the transportable object;

at least one data field encapsulated within the object; and

the at least one data field identifying the target data with sufficient particularity to locate the target data in the temporal presentation.

23. A system to facilitate capture of desired broadcast data, comprising:

a transportable object that represents a future temporal broadcast of target data and facilitates communication of data between recipients of the transportable object;

the broadcast of the target data occurring substantially independently from use of the object;

metadata encapsulated within the transportable object, the metadata includes information that describes the location of the broadcast of the target data so as to facilitate at least one of monitoring and recording of the target data during broadcast; and

a pattern recognition component that evaluates a pattern relating to characteristics of an entity associated with the target data and identifies the entity.

24. A method to facilitate at least one of monitoring and recording a temporal presentation of target data, comprising:

providing a transportable identifier that represents the target data, the identifier including metadata that identifies a future temporal presentation of the target data;

locating the temporal presentation of the target data based on the metadata so that the target data can be at least one of monitored and recorded during the temporal presentation; and

detecting a pattern that is based on characteristics of an entity associated with the target data to discern an identity of the entity.

25. The method of claim 24, further comprising:

collecting data associated with at least one of an event and condition;

providing a data signal based on the collected data; and

selectively aggregating data based on the data signal, at least a portion of the aggregated data defining the target data represented by the object.

26. The method of claim 25, further comprising:

recognizing which portions of the collected data are associated with an entity;

separating the collected data associated with the entity from other of the collected data; and

aggregating the collected data so that the at least a portion of the aggregated data includes the collected data associated with the entity.

27. The method of claim 25, wherein the collected data represents at least one of audio, video and sensor data.

IX. Evidence Appendix (37 C.F.R. §41.37(c)(1)(ix))

None.

X. Related Proceedings Appendix (37 C.F.R. §41.37(c)(1)(x))

None.